

1 THE HONORABLE THOMAS S. ZILLY

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7 UNITED STATES DISTRICT COURT  
8 FOR THE WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 NORTHWEST ADMINISTRATORS, INC.,

11 Plaintiff,

12 vs.

13 IAP WORLD SERVICES, INC., a Florida  
14 corporation,

15 Defendant.

No. C11-583Z

ORDER

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18 THIS MATTER comes before the Court on Plaintiff's motion to compel an  
19 audit and for attorney's fees and costs (docket no. 24). Having reviewed all papers  
20 filed in support of and in opposition to the motion, the Court now enters the following  
21 Order.  
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23 **Background**

24 The relevant facts of this case are not disputed. Defendant, IAP World  
25 Services, Inc., is a party to a collective bargaining agreement with Local 166 of the  
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1 International Brotherhood of Teamsters. Complaint at ¶ VI (docket no. 1 at 2);  
2 Answer at ¶ 6 (docket no. 22 at 2). As part of that agreement, Defendant is also bound  
3 to the Western Conference of Teamsters Pension Trust Agreement (“Trust  
4 Agreement”). Complaint at ¶ VII; Answer at ¶ 7. The Pension Trust Fund (“Trust”)  
5 accepts contributions from Defendant and other employers for the purpose of  
6 providing retirement, death, and termination benefits for eligible employees and their  
7 beneficiaries. Agreement & Declaration of Trust at 1, Ex. A to McKenna Decl.  
8 (docket no. 12-1 at 8). Plaintiff, Northwest Administrators, Inc., is the authorized  
9 administrator of the Trust. Id. at ¶ 2.

12 The Trust Agreement permits Plaintiff, as the trustee, to audit the records of  
13 employers who participate in the Trust whenever the Plaintiff deems such an audit  
14 necessary or desirable:

15 Each Employer shall promptly furnish to the Trustees or their authorized  
16 representatives on demand any and all records of his past or present  
17 Employees concerning the classification of such Employees, their  
18 names, Social Security numbers, amount of wages paid and hours  
19 worked or paid for, and ***any other payroll records and information that***  
20 ***the Trustees may require in connection with the administration of the***  
21 ***Trust Fund . . . .*** The Trustees or their authorized representatives may  
22 examine any books and records of each Employer which ***the Employer is***  
***required to furnish to the Trustees on demand wherever such***  
***examination is deemed necessary or desirable by the Trustees in the***  
***proper administration of the Trust.***

23 Agreement & Declaration of Trust, Art. XI, Sec. 1, Ex. A to McKenna Decl. (docket  
24 no. 12-1 at 20) (emphasis added). The Trust Agreement also entitles Plaintiff to  
25 recover legal fees and costs when Plaintiff must retain counsel to compel an audit:  
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1 If it becomes necessary for the Trustees to retain legal counsel to compel  
2 an Employer to furnish to, or permit the examination of books or records  
3 or information by, the Trustees or their representatives, ***the Employer***  
4 ***shall reimburse the Trust Fund for all reasonable attorneys' fees and***  
5 ***court costs incurred by the Trust Fund in connection therewith,***  
6 whether or not legal proceedings were instituted and whether or not such  
7 examination discloses that the Employer has failed to make appropriate  
8 or timely Employer Contributions to the Trust Fund.

9 Id. (emphasis added).

10 Plaintiff has filed the instant action to compel Defendant to turn over payroll,  
11 tax, timekeeping, and other related records for all of Defendant's employees, for a  
12 period beginning January 1, 2007 through present. Ex. B to McKenna Decl. (docket  
13 no. 12-2); Complaint at ¶ X. The motion to compel is for all intents a motion for  
14 summary judgment and will be treated accordingly.

## 15 Analysis

### 16 **A. Standard for Summary Judgment**

17 The Court shall grant summary judgment if no genuine issue of material fact  
18 exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.  
19 56(a) (2010). Once "the moving party has carried its burden of [showing it is entitled  
20 to judgment as a matter of law], its opponent must do more than show that there is  
21 some metaphysical doubt as to material facts." Matsushita Elec. Indus. Co. v. Zenith  
22 Radio Corp., 475 U.S. 574, 586 (1986) (internal citations omitted); see also Celotex  
23 Corp. v. Catrett, 477 U.S. 317, 323 (1986).

1           **B.     Trust Agreement – Right to Audit**

2           A trust for health or pension benefits is a contract governed by the Employee  
3 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., as  
4 amended (1988). ERISA requires the assets of employee benefit plans to be held in  
5 trust pursuant to a written trust agreement. Id. at §§ 1102(a), 1103(a). The language  
6 of a trust agreement defines the rights and obligations of the parties to the trust to the  
7 extent those rights and obligations are consistent with ERISA. Id. at § 1145; Santa  
8 Monica Culinary Welfare Fund v. Miramar Hotel Corp., 920 F.2d 1491, 1493–94 (9th  
9 Cir. 1990). Trust fund administrators are obligated, under both common law and  
10 ERISA, to ensure that the trust is properly funded by participating employers. Central  
11 States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc., 472  
12 U.S. 559, 570–72, 580 (1985). Accordingly, trust fund administrators are vested with  
13 broad audit powers to ensure compliance by employers. Id.

14           Article XI of the Trust Agreement, to which Defendant is bound, requires  
15 Defendant to: (1) produce all records of past and present employees upon demand by  
16 Plaintiff; and (2) allow Plaintiff to “examine any books and records of [Defendant] . . .  
17 wherever such examination is deemed necessary or desirable by the Trustees in the  
18 proper administration of the Trust.” Ex. A to McKenna Decl. (docket no. 12-1 at 20).  
19 The Trustees have deemed it “both necessary and desirable to the proper  
20 administration of the Trust” to examine Defendant’s books and records, as described  
21 in their original request to Defendant. Ex. B. to McKenna Decl. (docket no. 12-2 at 2).  
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1 Plaintiff's right to audit employers who participate in the Trust is well established.  
2 See Northwest Adm'rs v. Midland Trucking, No. C06-400-JPD, 2006 WL 2192220, at  
3 \*3-\*4 (W.D. Wash. Jul. 31, 2006); Northwest Adm'rs v. City of Burlington, No. C05-  
4 0991C, docket no. 18 at 7-9 (W.D. Wash. Nov. 15, 2005); Northwest Adm'rs v.  
5 Penske Transp. Servs., No. C02-0600C, docket no. 24 at 2-4 (W.D. Wash. Sept. 25,  
6 2002).

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8 Defendant's principal basis for opposing summary judgment is that it has had  
9 insufficient time to conduct discovery. Defendant asserts that it "intends to conduct  
10 discovery . . . regarding the possibility that this audit is being conducted for an  
11 improper purpose, such as to informally recruit new union members from its  
12 employees." Response to Motion at 4 (docket no. 27). Defendant cites to Fed. R. Civ.  
13 P. 56(d), which grants the Court discretion to defer consideration of the motion until  
14 Defendant has had further time to conduct discovery. The Ninth Circuit only requires  
15 a deferral under Rule 56(d) if Defendant's "sought-after facts are 'essential' to resist  
16 the summary judgment motion." State of California v. Campbell, 138 F.3d 772, 779  
17 (9th Cir. 1998) (evaluating Rule 56(f), which was recodified without substantive  
18 change as Rule 56(d) in 2010). A delay should not be granted if "the evidence sought  
19 is almost certainly nonexistent or is the object of pure speculation." Eklund v. City of  
20 Seattle, C06-1815Z, 2008 WL 112040, at \*4 (W.D. Wash. Jan. 9, 2008) (citing Terrell  
21 v. Brewer, 935 F.2d 1015, 1018 (9th Cir. 1991)). In this case Defendant has submitted  
22 no evidence to require any further delay in Plaintiff's right to an audit.  
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1 Plaintiff is entitled to all of the records it has sought thus far, for both  
2 participating and non-participating employees at the Fort Irwin, California site. See  
3 Minute Order ¶ 1 (docket no. 21). Defendant cites to no provision of the Trust  
4 Agreement—nor any statute, case, or other authority—that would impose a duty of  
5 confidentiality or indemnity on Plaintiff. The Trust Agreement governs Defendant’s  
6 duty to comply with Plaintiff’s audit request, and Defendant has not provided any  
7 justification for hindering that audit with further proceedings before this Court.  
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10 **C. Attorney’s Fees & Costs**

11 Plaintiff seeks an award of its attorney’s fees and costs incurred in bringing this  
12 suit. Article XI of the Trust Agreement allows Plaintiff to recover its fees and costs  
13 whenever “it becomes necessary for the Trustees to retain legal counsel to compel an  
14 Employer to furnish to, or permit the examination of books or records or information  
15 by, the Trustees or their representatives[.]” Ex. A to McKenna Decl. (docket no. 12-1  
16 at 20). Plaintiff is entitled to reasonable attorney’s fees of \$8015.25 and costs of  
17 \$682.88. See Leahy Decl. ¶ 2-5 (docket no. 26).  
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19 **D. Continuing Jurisdiction**

20 The Court will retain jurisdiction over this case in the event that disputes over  
21 the scope of the audit arise.  
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23 **Conclusion**

24 For the foregoing reasons, Plaintiff’s motion (docket no. 24) is GRANTED.  
25 Defendant is ordered to permit the Trustee’s representative to examine Defendant’s  
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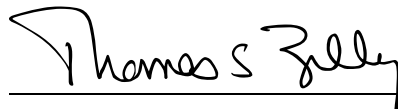
1 individual payroll records, federal tax forms, state industrial insurance and  
2 unemployment tax records, individual time cards and time records, and any other  
3 documentation necessary to determine the bargaining unit status and amount of work  
4 performed by all persons employed by Defendant at the Fort Irwin, California facility,  
5 from a period beginning January 1, 2007, until the date of this Order.  
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7 Further, Plaintiff's motion for attorney's fees and costs is GRANTED.

8 Finally, the Court will retain jurisdiction over this case until Plaintiff's audit of  
9 Defendant's records is completed. Plaintiff shall notify the Court once the audit has  
10 been completed, at which time this action shall be dismissed.  
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12 IT IS SO ORDERED.

13 DATED this 3rd day of October, 2011.  
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17 Thomas S. Zilly  
18 United States District Judge  
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